

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CONTINENTAL DATALABEL, INC.,)
)
) Plaintiff,
)
v.) No. 09 C 5980
)
AVERY DENNISON CORPORATION, et al.,))
)
) Defendants.)

MEMORANDUM ORDER

Continental Datalabel, Inc. ("Continental") has just filed its Reply to the Counterclaims advanced by Avery Dennison Corporation ("Avery") in this patent infringement action. That response has highlighted what appears to be some needless clutter created by the advancement of those Counterclaims.

Avery's Answer to Continental's First Amended Complaint ("FAC") is followed by a set of highly particularized affirmative defenses ("ADs") that relate to each of the three patents in suit here. Unless the Counterclaims involve more than meets the eye, they would seem to be wholly duplicative of the issues posed by the FAC and by Avery's responsive pleading, including the ADs: Those pleadings by both parties (like the Counterclaims) also bring into play the issues of infringement or noninfringement, of validity or invalidity and enforceability or unenforceability of each of the patents in suit.

This Court expects the litigants to speak to the matter mentioned here at the hearing previously scheduled for

December 16. Absent any persuasive argument that would justify retention of Avery's Counterclaims, it would seem that nothing would be lost to any of the parties by simply striking those Counterclaims (without prejudice to Avery's ability to defend the FAC's allegations in those respects).

After what has just been discussed had been dictated for transcription, this Court received the same-day filing by Memorex Products, Inc. ("Memorex") of its own Answer and Counterclaims. In that respect this Court's November 19, 2009 memorandum had already identified what it viewed as the problematic nature of Continental's insertion of Memorex into this action via the FAC. And Memorex's new filing appears to compound those concerns:

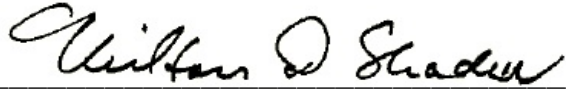
1. Of the 26-plus pages of Memorex's responsive pleading, fully two-thirds--the first 18 pages--is occupied by responses (more accurately, nonresponses) to the FAC's first five counts--counts advanced against Avery alone.

2. When it comes to the single count (FAC Count VI) that does charge Memorex with infringement, Memorex (like Avery), has followed its Answer with detailed ADs and with what appears to be a Counterclaim wholly duplicative of Count VI and those ADs.¹

Hence the same subjects will bear discussion at the December 16

¹ That parallelism is unsurprising, for Avery and Memorex are represented by the same counsel.

status hearing, even apart from the question whether Avery and Memorex ought to be sued in the same lawsuit.

A handwritten signature in cursive script, reading "Milton I. Shadur".

Milton I. Shadur
Senior United States District Judge

Date: December 9, 2009